

**SOAH DOCKET NO. 582-10-3449
TCEQ DOCKET NO. 2009-1612-PST-E**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER**

VS.

**EARNEST M. TEEL,
RESPONDENT**

§
§
§
§
§
§
§
§

BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR
DECISION AND PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), by and through a representative of the Litigation Division, and submits the following exceptions to the Administrative Law Judge's ("ALJ") Proposal for Decision ("PFD") and Proposed Order:

I. Introduction

Earnest M. Teel ("Respondent") owns real property with three inactive underground storage tanks ("USTs") located at 505 North United States Highway 287, Elkhart, Anderson County, Texas (the "Facility"). Respondent formerly operated a gas station with retail sales of gasoline on the real property. Respondent's USTs are not exempt or excluded from regulation under the Texas Water Code or the Rules of the Commission. The ED is seeking administrative penalties and corrective actions as outlined in the Executive Director's Second Amended Report and Petition ("EDSARP").

II. Exceptions

The ED agrees with and supports the ALJ's PFD and Proposed Order in that it concludes that Respondent owns the USTs in question, that Respondent neither permanently removed the USTs nor had them upgraded as required by 30 TEX. ADMIN. CODE § 334.47(a)(2), and that he should be required to permanently remove the USTs from service pursuant to 30 Tex.

ADMIN. CODE § 334.55. However, the ED disagrees with ALJ's conclusion that Respondent should not be assessed an administrative penalty, as it is inconsistent with the ED's policy for claims of inability to pay administrative penalties ("Policy").

The Policy sets the minimum administrative penalty for a non-operating business at one thousand two hundred dollars (\$1,200), payable in twelve (12) equal monthly payments of one hundred dollars (\$100) each. The minimum administrative penalty for an operating business is three thousand six hundred dollars (\$3,600), payable in thirty-six (36) equal monthly payments of one hundred dollars (\$100) each. A sole proprietor, like Respondent, will never be eligible for an assessed minimum penalty of less than one thousand two hundred dollars (\$1,200) pursuant to the Policy. Further, if a respondent establishes financial inability to pay the assessed administrative penalty, the ED assesses the minimum administrative penalty with the remainder deferred, contingent upon compliance. Thus, in this case, the penalty assessed in accordance with the 2002 Penalty Policy was two thousand six hundred twenty-five dollars (\$2,625). However, due to Respondent establishing his inability to pay the two thousand six hundred twenty-five dollar (\$2,625) penalty, the ED requested that Respondent be ordered to pay one thousand two hundred dollars (\$1,200) with the remaining amount of one thousand four hundred twenty-five (\$1,425) deferred, contingent upon compliance with the recommended technical requirements. The ALJ chose not to apply the Policy in this case and instead recommended that no penalty be assessed.

The purpose of an administrative penalty is to serve as a deterrent not only to the particular respondent, but also to the regulated community as a whole. Even if the penalty in this case does not serve as a deterrent to this Respondent, requiring Respondent to pay an administrative penalty serves as a deterrent to others who have failed to comply with Texas Water Code or the Rules of the Commission. Further, since a portion of the assessed penalty (\$1,425) is deferred contingent upon compliance, this serves as an incentive for Respondent to comply with the technical requirements. The ALJ's PFD and Proposed Order are inconsistent with Policy and prior orders that have been approved by the Commission based on the Policy.

Accordingly, the ED respectfully excepts to the PFD and the Proposed Order and submits the following substantive exceptions:

1. The ED requests that the portion of Finding of Fact No. 14 that states, "and that it was reducing the administrative penalty he seeks to

\$1,200, to be paid in 12 monthly installments of \$100" be replaced with, "and that the assessed administrative penalty, calculated in accordance with the Commission's 2002 Penalty Policy, was two thousand six hundred twenty-five dollars (\$2,625). However, that due to Respondent's financial inability to pay the administrative penalty, Respondent should be ordered to pay one thousand two hundred dollars (\$1,200), with the remaining one thousand four hundred twenty-five dollars (\$1,425) deferred, contingent upon compliance. The one thousand two hundred dollars (\$1,200) shall be payable in twelve (12) monthly installments of \$100 each."

2. The ED requests that Finding of Fact No. 15 be replaced with the following: "According to the TCEQ's Office of Administrative Services Financial Review Policy for Administrative Penalty Inability to Pay Claims, one thousand two hundred dollars (\$1,200) is the minimum administrative penalty that can be assessed against Respondent. The payments shall be made in equal monthly installments of one hundred dollars (\$100) each for twelve (12) months. The remainder of the administrative penalty is deferred pending Respondent's completion of the required Corrective Actions."
3. The ED requests that Finding of Fact No. 16 be replaced with, "An administrative penalty exceeding one thousand two hundred dollars (\$1,200) would reduce Respondent's ability to pay for the necessary corrective action requested by the ED."
4. The ED requests that the following be added as Finding of Fact No. 18: "Respondent operated the Facility for a number of years before closing it in 1993. Respondent has avoided his legal obligation for 17 years."
5. The ED requests that the following be added as Finding of Fact No. 19: "As the owner and operator of the Facility, Respondent knew or should have known of the existence of the USTs and his obligation to have them permanently removed or upgraded."
6. The ED requests that the remaining Findings of Fact, Nos. 18 and 19, be re-numbered 20 and 21, respectively.
7. The ED requests that re-numbered Finding of Fact No. 20 be replaced with the following: "The assessment of an administrative penalty of two thousand six hundred twenty-five dollars (\$2,625), with one thousand four hundred twenty-five dollars (\$1,425) deferred,

- contingent upon compliance, would serve as a deterrent to other UST owners who fail to permanently remove their USTs from service."
8. The ED requests that re-numbered Finding of Fact No. 21 be replaced with the following: "An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625) should be assessed against Respondent. One thousand four hundred twenty-five dollars (\$1,425) should be deferred contingent upon Respondent's timely and satisfactory compliance with the technical requirements."
 9. The ED requests that Conclusion of Law No. 12 be replaced with the following: "Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 7.053, the Commission's Penalty Policy, and the ED's financial review policy, an administrative penalty of two thousand six hundred twenty-five dollars (\$2,625) is assessed against Respondent. Due to Respondent's inability to pay the assessed administrative penalty, one thousand four hundred twenty-five dollars (\$1,425) of the administrative penalty is deferred, contingent upon compliance with all the terms of this order. The one thousand two hundred dollars (\$1,200) is payable in twelve (12) monthly installments of \$100 each."
 10. The ED requests that a new Paragraph 1 be added to the Section of the Order on Page 7 with the Heading "**NOW THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**". The new paragraph should read "An administrative penalty in the amount two thousand six hundred twenty-five dollars (\$2,625) is assessed by the Commission. One thousand four hundred twenty-five dollars (\$1,425) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount is waived upon full compliance with the terms of this Order. If Respondent fails to timely and satisfactorily comply with all requirements of this Order, the Executive Director may require Respondent to pay the deferred penalty amount. The remaining amount of one thousand two hundred dollars (\$1,200) shall be payable in twelve (12) payments of one hundred dollars (\$100) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the

Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re Earnest M. Teel, Docket No. 2009-1612-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

11. The ED requests that the remaining Paragraphs in that Section, Paragraphs 1 through 7, be re-numbered 2 through 8, respectively.

III. Other Suggested Modifications

The ED requests that the following non-substantive modifications be made to the proposed order:

1. The ED respectfully requests that the first sentence in the introductory paragraph be changed to read "...the Executive Director's Second Amended Report and Petition (EDSARP)..."
2. The ED respectfully requests that Finding of Fact No. 1 be replaced with the following: "Respondent owns real property on which he once operated a gas station with retail sales of gasoline at 505 North United States Highway 287, Elkhart, Texas (the Facility)."
3. The ED respectfully requests that Finding of Fact No. 4, be amended to read in part, "On April 30, 2009 and September 1, 2009, a TCEQ Tyler Regional Investigator documented that Respondent had violated the following..." The ED further requests that the semi-colon and the word "and" be removed from the end of the second bullet point and replaced with a period.
4. The ED respectfully requests that in Finding of Fact No. 7, the phrase "505 N. US Highway 287" be exchanged with the phrase "505 North United States Highway 287."

Respectfully submitted,

Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue,
Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by _____
Marshall Coover
State Bar of Texas No. 24059610
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2010, an original and seven (7) copies of the foregoing "Executive Director's Exceptions to the Proposal for Decision and Proposed Order" ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

Earnest M. Teel
17 South Holland Road
Mansfield, Texas 76063

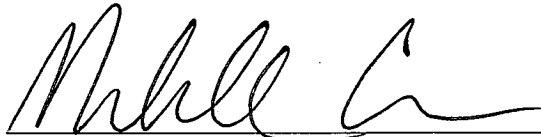
Via Certified Mail, Return
Receipt Requested Article
No.7010 0290 0002 7775 1527
and First Class Mail, Postage
Prepaid

The Honorable Judge Burkhalter
State Office of Administrative
Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Via Interagency Mail and Via
Facsimile Transmission to:
(512) 475-4994

Office of the Public Interest Counsel
Texas Commission on Environmental
Quality
Mail Code 103

Via Electronic Mail

A handwritten signature in black ink, appearing to read "Marshall Coover", is written over a horizontal line.

Marshall Coover. Staff Attorney
Litigation Division
Texas Commission on Environmental
Quality

Attachment A



AN ORDER Ordering Corrective Action by Earnest M. Teel; TCEQ Docket No. 2009-1612-PST-E; SOAH Docket No. 582-10-3449

On _____, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Second Amended Preliminary Report and Petition (Amended EDSAPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Earnest M. Teel (Respondent). A Proposal for Decision (PFD) was presented by Hunter Burkhalter, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owns real property on which he once operated a gas station with retail sales of gasoline at 505 North United States Highway 287, Elkhart, Texas (the Facility). ~~Respondent owns real property on which he once operated a gas station at 505 N. U.S. Highway 287, Elkhart, Texas (the Facility).~~
2. The gas station at the Facility has been out of business since 1993.
3. Three inactive underground storage tanks (USTs) that are not exempt or excluded from

regulation exist beneath the Facility.

4. On April 30, 2009 and September 1, 2009, a ~~Commission~~-TCEQ Tyler Regional Office investigator documented that Respondent had violated the following:
 - Alleged Violation #1: 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, USTs for which applicable components were not brought into timely compliance with the upgrade requirements.
 - Alleged Violation #2: 30 TEX. ADMIN. CODE §334.7(d)(3) by failing to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and current operational status of the USTs at the Facility; and.
5. On June 1, 2009, Respondent was served with a Notice of Violation letter.
6. On January 14, 2010, the Executive Director (ED) filed a Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. § 7.054. In the EDPRP, the ED alleged the two violations identified in Finding of Fact No. 4 and recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$3,675 against Respondent and that the Commission order Respondent to take certain corrective actions.
7. The ED mailed a copy of the EDPRP to Respondent at 505 North- United States Highway 287, Elkhart, Texas, on the same date that it was filed.
8. Respondent filed an answer to the original EDPRP and requested a hearing.
9. On March 25, 2010, the ED referred this matter to SOAH for a contested case hearing.

10. On April 1, 2010, the TCEQ Chief Clerk mailed notice to Respondent of the preliminary hearing scheduled for April 29, 2010.
11. The notice of hearing:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.
 - Advised Respondent, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
12. On April 29, 2010, the ED and Respondent appeared at a preliminary hearing and agreed to a procedural schedule leading to an evidentiary hearing on August 30, 2010.
13. The hearing on the merits was held on August 30, 2010. The ED, Respondent, and the Commission's Office of Public Interest Counsel (OPIC) appeared and participated in the hearing. The record closed that same day.
14. At the hearing, the ED announced that he was dropping Alleged Violation #2 identified in Finding of Fact No. 4, and that ~~it was reducing the administrative penalty he seeks to \$1,200, to be paid in 12 monthly installments of \$100~~ the assessed administrative penalty, calculated in accordance with the Commission's 2002 Penalty Policy, was two thousand six hundred twenty-five dollars (\$2,625). However, that due to Respondent's financial inability to pay the administrative penalty, Respondent should be ordered to pay one

thousand two hundred dollars (\$1,200), with the remaining one thousand four hundred twenty-five dollars (\$1,425) deferred, contingent upon compliance. The one thousand two hundred dollars (\$1,200) shall be payable in twelve (12) monthly installments of \$100 each.

15. According to the TCEQ's Office of Administrative Services Financial Review Policy for Administrative Penalty Inability to Pay Claims, one thousand two hundred dollars (\$1,200) is the minimum administrative penalty that can be assessed against Respondent. The payments shall be made in equal monthly installments of one hundred dollars (\$100) each for twelve (12) months. The remainder of the administrative penalty is deferred pending Respondent's completion of the required Corrective Actions. ~~Respondent is financially unable to pay any administrative penalty that may be assessed against him, having a negative monthly cash flow and lacking assets that could be liquidated.~~
16. An administrative penalty exceeding one thousand two hundred dollars (\$1,200) would reduce Respondent's ability to pay for the necessary corrective action requested by the ED. ~~If an administrative penalty were assessed against Respondent, it would reduce his ability to pay for the necessary corrective action requested by the ED at the Facility.~~
17. Respondent is 82 years old and in ill health.
18. Respondent operated the Facility for a number of years before closing it in 1993. Respondent has avoided his legal obligation for 17 years.
19. As the owner and operator of the Facility, Respondent knew or should have known of the existence of the USTs and his obligation to have them permanently removed or upgraded.
- 18.20. The assessment of an administrative penalty of two thousand six hundred twenty-five dollars (\$2,625), with one thousand four hundred twenty-five dollars (\$1,425) deferred,

contingent upon compliance, would serve as a deterrent to other UST owners who fail to permanently remove their USTs from service. ~~Because the former gas station at the Facility has long been closed and there is no risk that Respondent will engage in new UST-related violations in the future, the assessment of an administrative penalty against him would serve no deterrent value.~~

- 19.21. An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625) should be assessed against Respondent. One thousand four hundred twenty-five dollars (\$1,425) should be deferred contingent upon Respondent's timely and satisfactory compliance with the technical requirements. ~~No administrative penalty should be assessed against Respondent.~~

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Respondent owns the USTs located on the Facility.
3. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE ANN. § 7.073.

5. As required by TEX. WATER CODE ANN. §7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.
6. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalty and corrective actions sought.
7. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
8. Based on the Findings of Fact and Conclusions of Law, Respondent violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, USTs for which applicable components were not brought into timely compliance with the upgrade requirements.
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and

- Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 11. The Commission has adopted a Financial Review Policy for Administrative Penalty Inability to Pay Claims, setting forth its policy regarding financial analyses to determine a respondent's ability to pay administrative penalties, effective September 19, 2005.
 12. Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 7.053, the Commission's Penalty Policy, and the ED's financial review policy, an administrative penalty of two thousand six hundred twenty-five dollars (\$2,625) is assessed against Respondent. Due to Respondent's inability to pay the assessed administrative penalty, one thousand four hundred twenty-five dollars (\$1,425) of the administrative penalty is deferred, contingent upon compliance with all the terms of this order. The one thousand two hundred dollars (\$1,200) is payable in twelve (12) monthly installments of \$100 each. ~~Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, the Commission's Penalty Policy, and the Commission's Financial Review Policy for Administrative Penalty Inability to Pay Claims, no administrative penalty should be assessed against Respondent.~~
 13. Based on the above Findings of Fact, Respondent should be required to take the corrective action that the Executive Director recommends.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. An administrative penalty in the amount two thousand six hundred twenty-five dollars (\$2,625) is assessed by the Commission. One thousand four hundred twenty-five dollars (\$1,425) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount is waived upon full compliance with the terms of this Order. If Respondent fails to timely and satisfactorily comply with all requirements of this Order, the Executive Director may require Respondent to pay the deferred penalty amount. The remaining amount of one thousand two hundred dollars (\$1,200) shall be payable in twelve (12) payments of one hundred dollars (\$100) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re Earnest M. Teel, Docket No. 2009-1612-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

- 1.2. Within 30 days after the effective date of this Order, Earnest M. Teel shall permanently remove the UST systems from service, in accordance with 30 TAC § 334.55.
- 2.3. Within 60 days after the effective date of this Order, Earnest M. Teel shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be sent to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

Mike Brashear, Waste Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Dr.
Tyler, TX 75701-3734

- 3.4. The ED may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

- 4.5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
- 5.6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
- 6.7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
- 7.8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Chairman
For the Commission